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17 IN THE UNITED STATES DISTRICT COURT

18 FOR THE DISTRICT OF GUAM

19 UNITED STATES OF AMERICA,

20 Plaintiff,

21 vs.

22 TERRITORY OF GUAM, et. al.,

23 Defendants.  
24

CIVIL CASE NO. 91-00020

**JOINT MOTION FOR  
DISMISSAL AND  
MEMORANDUM IN SUPPORT**

1 Pursuant to § X (Termination of Agreement) of the Settlement Agreement in this  
2 case filed on May 29, 1991, Plaintiff United States and Defendant Territory of Guam  
3 (collectively “the Parties”) jointly move to terminate the settlement and dismiss this action.  
4 As grounds therefor, the Parties jointly file this Memorandum of Points and Authorities in  
5 support of their Motion and a proposed order.

## 6 **MEMORANDUM OF POINTS AND AUTHORITIES**

### 7 **I. Introduction**

8 On May 16, 1991, the Parties entered into a settlement agreement regarding the  
9 welfare of persons at the Guam Department of Corrections (“DOC”) facilities.  
10 See Exhibit A (the “Settlement Agreement”). The Settlement Agreement was designed to  
11 remedy constitutional violations found in the United States’ investigation of DOC pursuant  
12 to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 *et seq.* The  
13 Settlement Agreement was issued as an order of this Court on May 29, 1991. It required the  
14 Territory and DOC to improve practices and the conditions in certain facilities related to  
15 sanitation, fire safety, and access to medical, mental, and dental health care. For the past  
16 several years, Sections III and VII are the only substantive aspects of the Settlement  
17 Agreement that remain at issue.<sup>1</sup> Since 2015, the Territory’s renewed commitment to the  
18 process has allowed it to satisfy the outstanding requirements of the Settlement Agreement.

19 On January 15-16, 2015, during a settlement conference facilitated by Judge Alex  
20 Munson, the Parties negotiated a timeline to resolve the Settlement Agreement’s two

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23 <sup>1</sup> The Court dismissed Section V of the Settlement Agreement in June 2010, finding that the provisions  
24 regarding fire safety at the Department of Mental Health and Substance Abuse facility had been satisfied. ECF No.  
194. During a May 22, 2012 status conference, the Court dismissed Section VI after the Parties agreed that  
environmental health conditions had been resolved. ECF No. 229. The provisions of Section II, which pertain to  
conditions in the Rosario Detention Facility, a component of the Mangilao facility, have been resolved for several  
years.

1 outstanding issues: (1) DOC's development, revision, and implementation of a plan that  
2 provides adequate medical, dental, and mental health care for inmates and detainees under §  
3 VII; and (2) DOC's completion of repairs to the electronic locking system for Units 5, 6, 7,  
4 and 17 of the Mangilao facility under § III. *See* ECF No. 305 at 1, 5-6. On January 16,  
5 2015, the Court entered the Parties' timeline as an order for the Territory's compliance with  
6 the remaining health care and locking system requirements of the Settlement Agreement.  
7 *See* ECF No. 305 ("the Munson Order"). The Munson Order included 25 aggressive  
8 compliance deadlines for the Territory, beginning on March 18, 2015 and ending on  
9 November 13, 2015. *Id.* The Munson Order also required the Territory to file a monthly  
10 report of its progress in meeting the compliance deadlines. *Id.* On November 18, 2015, the  
11 Territory reported to the Court that it had fully complied with the health care requirements  
12 of the Munson Order and the deadlines set forth therein. *See* 30-Day Court Progress Report  
13 Under Seal, Nov. 18, 2015 at 2. The parties then negotiated and carried out a process for  
14 the United States to fully evaluate and confirm the reforms described by the Territory.

## 15 **II. Termination of the Settlement Agreement and Dismissal of the Case Are** 16 **Appropriate**

17 Section X of Settlement Agreement provides that the court will have jurisdiction in  
18 this matter until the Territory demonstrates that it has "fully and faithfully implemented all  
19 provisions of this Settlement Agreement and plans submitted pursuant thereto, and until the  
20 case is dismissed." Settlement Agreement, § X at 20.<sup>2</sup> As described more fully below, the  
21 Territory has satisfied this standard, and dismissal is therefore appropriate.

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24 <sup>2</sup> Section X also provided for an adversarial process for dismissal upon motion by the Territory, which does  
not apply in the instant case because the Parties agree that the Territory has fully and faithfully implemented the  
Settlement Agreement's provisions and jointly seek its termination and dismissal.

1                   **a. The Territory Has Demonstrated Compliance with the Munson Order**  
2                   **and 1991 Settlement Agreement Health Care Requirements**

3                   Section VII of the Settlement Agreement requires a plan to provide adequate  
4 inmate/detainee access to routine and emergency medical, dental, and mental health care.  
5 *See* Settlement Agreement at 16. To meet this requirement, DOC began working to meet  
6 standards of care promulgated by the National Commission on Correctional Health Care.  
7 At the same time, DOC began fundamentally changing how it delivers health care to  
8 inmates, shifting away from its previous reliance on contracted health care service to a  
9 community health care model in which services are managed and provided by Guam  
10 Memorial Hospital. This effort included revisions to policies, increases in staffing at DOC,  
11 and increased training. The Territory also has taken steps to ensure mental health care with  
12 a full-time psychiatrist, who is supported by Guam Behavioral Health and Wellness, and  
13 improved access to dental care at DOC.

14                  The United States has confirmed the Territory's November 2015 representations of  
15 compliance with the Munson Order and the Settlement Agreement. In December 2015, the  
16 United States requested that DOC provide certain compliance evidence prior to dismissal of  
17 the case. DOC began providing documents and information for review by the United States  
18 on a staggered basis in January 2016. This included providing medical records and policies  
19 for the United States' review; hosting a tour of DOC facilities attended by the Court,  
20 Independent Monitor Brad Klemm, and representatives of the United States Attorney's  
21 Office; and making DOC's health care providers and consultants available for interview.

22                  During the most recent status hearing on November 3, 2016, DOC reported to the  
23 court that it had completed its submission of compliance evidence. On December 21, 2016,  
24 the Parties conducted a final teleconference, so that DOC's health care providers and

1 correctional-medicine expert could answer questions and discuss the remaining concerns of  
2 the United States' expert. During the same teleconference, the Parties also discussed  
3 DOC's plans to maintain and improve health care treatment for DOC inmates. The parties  
4 agreed that DOC has satisfied the specific requirements of the Munson Order and the  
5 Settlement Agreement's requirement that DOC have a plan for providing a health care to  
6 inmates.

7 **b. The Territory Has Made Sufficient Progress in Satisfying Its**  
8 **Obligations to Improve the Electronic Locking System at the Mangilao**  
9 **Facility**

10 The Settlement Agreement's provisions on fire safety include requirements to install  
11 remote, electronic locking systems at posts throughout the facility, some of which had  
12 become non-functional or in need of serious repair. *See* Settlement Agreement, § III. The  
13 Munson Order required the Territory to secure funding and complete repairs to the  
14 electronic locking systems for Posts 5, 6, 7 and 17 at the Mangilao facility. Repairs by  
15 DOC to the existing electronic locking system for Post 5 were completed in September  
16 2015, and the system was demonstrated during the Court's June 21, 2016 tour of DOC's  
17 facilities. By October 2015, the Territory further completed the construction work it was  
18 capable of which included roof repairs to correct leaks at Post 7, and installing  
19 ingress/egress electronic locks to entrance gates and certain internal doors.

20 In order to satisfy its remaining obligations with respect to Posts 6, 7, and 17, the  
21 Territory needed to rely on an outside contractor to complete the work. With the assistance  
22 of a security-engineering consultant from the University of Guam, detailed specifications of  
23 the project were finalized in August 2016. The level of detail of the specification provided  
24 prospective bidders with extensive information on the project to allow more bidders to

1 respond. DOC had originally issued a Design Build Request for Proposal RFP No. 001-15  
2 on March 13, 2015, resulting in the submission of a proposal by only one vendor and the  
3 parties failed to negotiate an agreement.

4 The Territory's reissuance of a detailed invitation to bid based on extensive  
5 information obtained from months of research and thorough bid specifications was  
6 published in September 2016. Five vendors responded. Following site inspections by  
7 responding vendors and a short additional extension to respond to requests being made by  
8 manufacturers of the locking systems, DOC closed the bidding process on January 31,  
9 2017. On March 31, 2017, DOC issued a letter of determination stating its selection of the  
10 successful bidder. At the security consultant's recommendation, the project also includes  
11 the installation of cameras to augment the electronic locking system. With funding in  
12 place, and an anticipated staggered construction schedule, final completion is anticipated by  
13 December 2017. The Parties agree that the requirements of the Munson Order and the  
14 Settlement Agreement relating to the electronic locking system have been sufficiently  
15 satisfied.

16 **c. Standard for Termination**

17 Termination of a consent decree is appropriate where a party has substantially  
18 complied with its terms, and where any deviation from literal compliance has not defeated  
19 an essential purpose of the decree. *Jeff D. v. Otter*, 643 F.3d 278, 284 (9th Cir. 2011). The  
20 parties entered the Settlement Agreement to remedy the violations of federal rights alleged  
21 in the United States' findings letter and complaint and to better ensure the safety and well-  
23 being of inmates and detainees in the Territory. *See* Settlement Agreement at 4-5 ¶¶ 1-5.  
24 As discussed above, the practices and conditions at DOC related to the health care and fire

1 safety improved significantly under the Settlement Agreement and the Munson Order.  
2 With respect to medical, mental health and dental care, the Territory's actions to achieve  
3 compliance over the last two years have culminated in a transformational shift in health  
4 care practices. DOC has implemented reforms that have improved access to routine and  
5 emergency medical, mental and dental health care for more than 700 inmates and detainees.  
6 *See* Settlement Agreement, § VII. In addition, though completion of the remote locking  
7 system improvements is not expected before December, the Parties agree that the  
8 Territory's diligent work securing funding and planning for this project demonstrate a true  
9 commitment to see it through to completion and provide safer conditions for DOC  
10 detainees and inmates, as well as corrections officers. A fully functional remote locking  
11 system will allow for a more rapid and efficient evacuation in the event of an emergency,  
12 reducing the risk of harm from fire or smoke inhalation. *See id.* § III.

### 13 **III. Conclusion**

14 For the foregoing reasons, the Parties' joint motion to dismiss should be granted in  
15 accordance with the attached proposed order. The Territory has produced evidence that DOC  
16 has learned the national correctional health care standards, has hired and thoroughly trained  
17 necessary personnel, has established an infrastructure for the DOC outpatient clinic's future  
18 success, created and implemented compliant written policies and will complete the remaining  
19 work on the locking system. Accordingly, this 25-year-old case should be dismissed.

20 RESPECTFULLY SUBMITTED this 11th day of April, 2017.  
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